



Ngā tāpaetanga a Te Hunga Rōia Māori o Aotearoa

Submissions of Te Hunga Rōia Māori o Aotearoa – The Māori Law Society

Te rā 23 o Whiringa-ā-nuku 2020

To: Ministry of Business, Innovation & Employment

Re: Te Hunga Rōia Māori o Aotearoa views on the Discussion Paper on the Review of the Plant Variety Rights Act 1987: Outstanding Policy Issues

A. Kupu whakataki | Introduction

1. Te Hunga Rōia Māori o Aotearoa – the Māori Law Society (**THRMOA**) was formally established in 1988. Since then, THRMOA has grown to include a significant membership of legal practitioners, judges, parliamentarians, legal academics, policy analysts, researchers and Māori law students. Our vision is Mā te Ture, Mō te Iwi – by the Law, for the People.
2. THRMOA encourages the effective networking of members, makes submissions on a range of proposed legislation, facilitates representation of its membership on selected committees, and organises regular national hui which provide opportunities for Māori to discuss and debate legal issues relevant to Māori.
3. When making submissions on law reform, THRMOA does not attempt to provide a unified voice for its members, or to usurp the authorities and responsibilities of whānau, hapū and iwi, but rather, seeks to provide a whakaaro Māori based legal analysis and submissions on law reform.
4. THRMOA welcomes the opportunity to make written submissions on the Discussion Paper – Review of the Plant Variety Rights Act 1987: Outstanding Policy Issues (**the Discussion Paper**).

B. He whakarāpopototanga | Summary

5. THRMOA does not currently support the proposed amendments to the Plant Variety Rights Act 1987 until the government completes a full review of the intellectual property laws as a consequence of the WAI 262 claim and the Tribunal report *Ko Aotearoa Tēnei*¹, and the government completes its whole-of-government response as outlined in *Te Pae Tawhiti*².

¹ <https://waitangitribunal.govt.nz/news/ko-aotearoa-tenei-report-on-the-wai-262-claim-released/>.

² <https://www.tpk.govt.nz/en/a-matou-kaupapa/wai-262-te-pae-tawhiti>.



6. One of the workstreams proposed within the whole-of-government response is the review of the Plant Variety Rights Act 1987. To carry out a review of this Act independent from the whole-of-government response is not consistent with the recommendations in the Tribunal's report or Te Pae Tawhiti.
7. THRMOA also repeats its previous submissions that a broader review is necessary to ensure the intellectual property system fully recognises and protects traditional knowledge, mātauranga Māori, Māori relationships with native plant species, and is consistent with New Zealand's obligations under Te Tiriti o Waitangi (TOW), the Convention on Biological Diversity (CBD), and the United Nations Declaration on the rights of Indigenous Peoples (UNDRIP).
8. THRMOA notes this review does not include any consideration of New Zealand's accession to the Nagoya Protocol, which regulates the discovery and subsequent use of genetic resources and protects traditional knowledge in genetic resources.
9. THRMOA is of the view the current review should include consideration of New Zealand's position in relation to the Nagoya Protocol, including how New Zealand regulates the discovery and subsequent use of genetic resources, and protects traditional knowledge and mātauranga Māori in genetic resources.
10. Finally, THRMOA notes the review does not include the development of a bioprospecting regime or any ABS protocols that are TOW compliant.
11. THRMOA is of the view this review should include consideration of a bioprospecting regime and ABS protocols that are TOW compliant.
12. The above types of reforms were envisaged as part of the response to the WAI 262 report.³
13. THRMOA encourages the government to continue work in this area towards a fully inclusive intellectual property system including a fully inclusive PVR regime, that recognises and protects traditional knowledge and mātauranga Māori, recognises and protects Māori relationships, including kaitiaki relationships with native species, is based on the principles of TOW including an ongoing partnership with Māori, gives effect to New Zealand's obligations under CBD and UNDRIP, considers a review of New Zealand's accession to the Nagoya Protocol, and works with Māori to develop a bioprospecting regime and ABS protocols that are TOW compliant.

C. Ngā Tāpaetanga o THRMOA | THRMOA Submissions

14. THRMOA does not currently support the proposed definitions for 'indigenous plant species' or 'non-indigenous species of significance', because the Act needs to recognise

³ At 96.



and provide protection for kaitiaki relationships with taonga species as proposed in *Ko Aotearoa Tēnei*. If the government had completed its full review of the intellectual property laws and its whole-of-government response to the recommendations in *Ko Aotearoa Tēnei*, then terms such as ‘taonga species’ would be defined, and there would not be any need to introduce and define additional terms to create further uncertainty.

15. THRMOA agrees that any information disclosed in the pre-application stage should be kept confidential.
16. THRMOA supports the naming of the committee established under the Act as the Māori PVR Committee.
17. THRMOA supports the proposed amendments to the criteria for appointment to the Māori PVR Committee. However, THRMOA would like to see the appointment process reflect the principles of partnership as set out in TOW, where Māori have the ability to nominate and appoint representatives to that Committee, similar to the process established under Te Ture Mō Te Reo Māori for appointment to Te Taura Whiri.
18. THRMOA supports the list of relevant considerations for reaching determinations on kaitiaki relationships.
19. THRMOA supports the recommendation that the Committee should take an investigative approach to decision-making.
20. THRMOA supports the recommendation that the Committee should be required to reach a unanimous decision on a given course of action, and only in the event that, despite all efforts a decision cannot be reached can the Chair of the Committee allow a decision to be made by either a consensus or a vote (Option 3).
21. THRMOA supports the recommendation that the Committee should only facilitate discussions between kaitiaki and breeders on the issue of mitigations, and in addition, the Committee should determine whether the mitigations are sufficient to address any proposed negative impacts on the kaitiaki relationship with the taonga species.
22. THRMOA agrees that determinations made by the Committee should be reviewable. THRMOA agrees option 3 provides a workable solution, and ensures important decisions affecting Māori are determined by Māori. Another possible option is to provide a review to an independent Tribunal such as the Waitangi Tribunal, which is a body that would have the necessary expertise to review these matters.
23. THRMOA also agrees a timeframe should be imposed for a party to request a review by the Committee, an independent Tribunal, or a judicial review.
24. THRMOA is of the view that if the kaitiaki condition has not been met, then an objection after grant should be allowed whether the Committee has or has not considered the



application. It may be difficult for the applicant and the Committee to determine who is the kaitiaki. If the relevant information is not available to the parties, then there does need to be a process where kaitiaki can seek nullification of the grant if the kaitiaki condition is not met.

25. THRMOA is of the view origin and breeding information should be kept confidential unless authorised by the owner, it is in the public interest, or a kaitiaki interest or relationship could be affected. Introducing a requirement that the origin and breeding information must be provided if a kaitiaki interest or relationship could be affected.
26. THRMOA has no view on the supply of plant material and seeds, but THRMOA suggests the Act include provisions that ensure that all plant material or seeds will be returned to the applicant once that material or seeds are no longer required by the PVR office.
27. THRMOA has no view on the provision of propagating material for comparison and reference purposes, but THRMOA suggests the Act include provisions that ensure that all propagating material will be returned to the applicant once those materials are no longer required by the PVR office.
28. THRMOA has no view on the conditions of growing trials, but THRMOA suggests the Act include provisions that ensure that all materials provided by the applicant for growing trials will be returned to the applicant once those materials are no longer required by the PVR office.
29. THRMOA agrees the costs of the trials and examination of the PVR should be covered by the applicant and paid within a stipulated timeframe.
30. THRMOA agrees the Act should include provision for a right to be heard similar to Section 208 of the Patents Act 2013, and appeals should be available to the High Court.

D. Kupu Whakamutumutu | In Closing

31. THRMOA expects to be informed regarding this kaupapa, including any progress and developments and any further consultation.
32. Should you have any pātai or wish to discuss our submissions, please contact ynell Tuffery Huria at lynell.tufferyhuria@ajpark.com.

Ngā mihi nui ki a koutou

Lynell Tuffery Huria
On behalf of THRMOA